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15 and the Plaintiff Class

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

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4 JAMI ZUCCHERO, individually and on
5 behalf of all others similarly situated,

6 Plaintiff,
7 v.

8 HEIRLOOM ROSES, INC.,
9 Defendant.

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Case No. 4:22-cv-00068-KAW

CLASS ACTION

[PROPOSED] ORDER AND JUDGMENT:

**(1) GRANTING FINAL APPROVAL OF
CLASS ACTION SETTLEMENT;
(2) AWARDING ATTORNEYS' FEES AND
COSTS TO CLASS COUNSEL; AND
(3) AWARDING A SERVICE AWARD TO
THE REPRESENTATIVE PLAINTIFF**

Date: May 2, 2024

Time: 1:30 p.m.

Dept.: 10B

Judge: Hon. Kandis A. Westmore

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1 This matter came before the United States District Court for the Northern District of
2 California, Department 10B, at 1:30p.m. on May 2, 2024, with Cole & Van Note appearing as
3 counsel for Representative Plaintiff Jami Zuccher, individually, and on behalf of the Settlement
4 Class, and Davis Wright Tremaine LLP appearing for Defendant Heirloom Roses, Inc. The Court,
5 having carefully considered the briefs, argument of counsel and all matters presented to the Court
6 and good cause appearing, hereby **GRANTS** Plaintiff's Motion for Final Approval of Class Action
7 Settlement.

FINDINGS

9 Based on the oral and written argument and evidence presented in connection with the
10 Motion, the Court makes the following findings:

11 1. All terms used herein shall have the same meaning as defined in the proposed
12 Settlement Agreement (“Agreement”).

13 2. This Court has jurisdiction over the subject matter of the above-captioned litigation
14 and over all Parties to this Litigation, including the Settlement Class.

Preliminary Approval of the Settlement

16 3. On November 30, 2023, the Court granted preliminary approval of a class-wide
17 settlement. At this same time, the Court approved certification of a provisional Settlement Class
18 for settlement purposes only.

Notice to the Plaintiff Class

20 4. In compliance with the Preliminary Approval Order, the Class Notice was emailed
21 to the Settlement Class Members on or about December 22, 2023. Emailing the Class Notice was
22 the best notice practicable under the circumstances and was reasonably calculated to communicate
23 actual notice of the Litigation and the proposed settlement to the Settlement Class. To the extent
24 emails were returned as undeliverable, a replacement Class Notice was sent via first class mail to
25 the Settlement Class Members at their last known addresses to the extent that information was
26 known to Heirloom Roses, Inc. 377 Notices were undeliverable following both methods of
27 attempted service.

1 5. According to the Claims Administrator, there are 251 members of the Settlement
 2 Class who will receive a benefit from a Settlement Claim. The deadline for opting out has passed
 3 and one Settlement Class Members has done so. One Settlement Class Members submitted a timely
 4 written objection and _____ appeared in person at the Final Approval Hearing to object. There
 5 was an adequate interval between mailing of the Notice and the deadline to permit Settlement
 6 Class members to choose what to do and act on their decision.

7 **Fairness of the Settlement**

8 6. The Agreement is entitled to a presumption of fairness. *Leonardo's Pizza by the*
 9 *Slice, Inc. v. Wal-Mart Stores, Inc.*, 544 U.S. 1044, 125 S.Ct. 2277, 161 L. Ed. 2d 1080 (2005) (a
 10 "presumption of fairness, adequacy and reasonableness may attach to a class settlement reached
 11 in arm's-length negotiations between experienced, capable counsel after meaningful discovery.")
 12 (quoting Manual for Complex Litigation, Third § 30.42 (1995)). There has been no collusion
 13 between the parties in reaching the proposed settlement.

14 7. Plaintiff's investigation and discovery were sufficient to allow the Court and
 15 counsel to act intelligently.

16 8. Counsel for both parties are experienced in similar data breach class action
 17 litigation. All counsel recommended approval of the Agreement.

18 9. The consideration to be given to the Settlement Class Members under the terms of
 19 the Agreement is fair, reasonable and adequate considering the strengths and weaknesses of the
 20 claims asserted in this action and is fair, reasonable and adequate compensation for the release of
 21 Settlement Class Members' claims, given the uncertainties and risks of the litigation and the delays
 22 which would ensue from continued prosecution of the action.

23 10. The proposed Agreement is approved as fair, adequate and reasonable and is in the
 24 best interests of Settlement Class Members.

25 **Attorneys' Fees/Expenses**

26 11. The Agreement provides for (and Class Counsel seeks) an award of up to \$198,500
 27 to Class Counsel as attorneys' fees and expenses in this action. This was negotiated separately
 28 from and will be paid separately and independently from the monies paid to Settlement Class

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1 Members for their claims. As such, this award will not affect the amount of money any Settlement
 2 Class Member will receive for their claims.

3 12. The award of attorneys' fees and reimbursement of litigation expenses are
 4 reasonable, in light of the contingent nature of Class Counsel's work, the substantial amount of
 5 work actually performed such that Class Counsel will not receive a windfall incommensurate with
 6 the time and effort dedicated to the case, the risks assumed, the results achieved by Class Counsel
 7 and due to the significant amount of work Class Counsel anticipates post-final approval of the
 8 settlement.

9 **Service Award**

10 13. The Agreement provides for a Service Award of up to \$1,500 for Representative
 11 Plaintiff Jami Zucchero, subject to the Court's approval. This was negotiated separately from and
 12 will be paid separately and independently from the monies paid to Settlement Class Members for
 13 their claims. The Court finds this Service Award reasonable in light of the risks and burdens
 14 undertaken by Representative Plaintiff in this action and for her time and effort in bringing and
 15 prosecuting this matter on behalf of the Settlement Class.

16 **IT IS HEREBY ORDERED THAT:**

17 1. The Settlement Class is certified for the purposes of settlement only. The Settlement
 18 Class is hereby defined as:

19 All individuals within the United States whose name and personal payment card
 20 information was potentially exposed to unauthorized third-parties as a result of the
 21 Data Security Incident that occurred between approximately February to October
 22 of 2021.

23 2. The Agreement is hereby finally approved as fair, reasonable, adequate and in the
 24 best interest of the Settlement Class.

25 3. Class Counsel are awarded attorneys' fees in the amount of \$198,500, inclusive of
 26 litigation costs. Class Counsel shall not seek or obtain any other compensation or reimbursement
 27 from Defendant, Plaintiff or members of the Settlement Class.

28 4. Payment of a Service Award in the amount of \$1,500 to Plaintiff Jami Zucchero.

1 5. A Final Judgment in this action is hereby entered and this shall constitute a
 2 Judgment for purposes of Federal Rule of Civil Procedure Rule 54.

3 6. This Final Judgment shall bind each Settlement Class Member and shall operate as
 4 a full release and discharge of the Released Claims against the Released Parties. All rights to appeal
 5 the Final Judgment have been waived. This Final Judgment and Final Approval Order shall have
 6 *res judicata* effect and bar all Settlement Class Members from bringing any action asserting
 7 Settlement Class Members' Released Claims under the Agreement.

8 7. The Agreement and Settlement are not an admission by Defendant, nor is this Final
 9 Approval Order a finding, of the validity of any claims in this action or of any wrongdoing by
 10 Defendant. Neither this Final Approval Order, this Final Judgment, the Agreement, nor any
 11 document referred to herein, nor any action taken to carry out the Agreement is, may be construed
 12 as, or may be used as an admission by or against Defendant of any fault, wrongdoing or liability
 13 whatsoever. The entering into or carrying out of the Agreement, and any negotiations or
 14 proceedings related thereto, shall not in any event be construed as, or deemed to be evidence of,
 15 an admission or concession with regard to the denials or defenses by Defendant and shall not be
 16 offered in evidence in any action or proceeding against Defendant in any court, administrative
 17 agency or other tribunal for any purpose whatsoever other than to enforce the provisions of this
 18 Final Approval Order, this Final Judgment, the Agreement or any related agreement or release.
 19 Notwithstanding these restrictions, any of the Released Parties may file in this case or any other
 20 proceeding this Final Approval Order, this Final Judgment, the Agreement or any other papers and
 21 records on file in the case as evidence of the Settlement to support a defense of *res judicata*,
 22 collateral estoppel, release or other theory of claim or issue preclusion or similar defense as to the
 23 Released Claims.

24 8. Notice of entry of this Final Approval Order and Final Judgment shall be given to
 25 Class Counsel on behalf of Plaintiff and all Settlement Class Members. It shall not be necessary to
 26 send notice of entry of this Final Approval Order and Final Judgment to individual Settlement
 27 Class Members, but it shall be posted on the settlement website. The time for any appeal shall run
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1 from service of notice of entry of the Final Approval Order and Final Judgment by Class Counsel
2 on Defendant.

3 9. After entry of this Order and Final Judgment, the Court shall retain jurisdiction to
4 construe, interpret, implement and enforce the Agreement and this Judgment, to hear and resolve
5 any contested challenge to a claim for settlement benefits and to supervise and adjudicate any
6 dispute arising from or in connection with the distribution of settlement benefits.

7 10. In the event the Settlement does not become final and effective in accordance with
8 the terms of the Settlement Agreement or is terminated, cancelled or otherwise fails to become
9 effective for any reason, then this Final Approval Order and Final Judgment, and all orders entered
10 in connection herewith, shall be rendered null and void and shall be vacated.

11 11. A Compliance Hearing is hereby set for _____ a.m./p.m. in Department _____
12 of this Court. At least ten court days before the Compliance Hearing, Class Counsel shall submit
13 a Case Management Conference Statement, accompanied by a Declaration from the Claims
14 Administrator (including a summary accounting identifying the distributions made, the number
15 and value of any uncashed checks, the status of any unresolved issues and any other matters
16 appropriate to evaluate the effectiveness and completeness of the distribution).

**HONORABLE KANDIS A. WESTMORE
UNITED STATES MAGISTRATE JUDGE**